

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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ELWIN WEEKES and VARENE DALEY,

12 CV 5350 (SJ) (CLP)

Plaintiffs,

v.

ORDER ADOPTING
REPORT AND
RECOMMENDATION

INDYMAC BANK MORTGAGE
SERVICES, et al.,

Defendants.
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A P P E A R A N C E S
DAHIYA LAW OFFICES
350 Broadway
Suite 412
New York, NY 10013
By: Karamvir Dahiya
Attorneys for Plaintiff

JOHNSON, Senior District Judge,

Elwin Weekes and Varene Daley (“Plaintiffs”) filed this action on October 26, 2012, claiming that defendants violated various federal statutes in the course of persuading Plaintiffs to re-finance a home purchased by them over 20 years ago, including the Truth in Lending Act, 11 U.S.C. § 1601 et seq., the Fair Housing Act, 42 U.S.C. § 3601 et seq., the Home Ownership and Equity Protection Act, 15 U.S.C. § 1639, et seq., the Equal Credit Opportunity Act, 15 U.S.C. 1691, et seq., as well as 42 U.S.C. §§ 1981, 1983. Appended to these claims were claims for breach of contract, breach of fiduciary duty, claims pursuant to New York’s general business law, and additional common law claims.

In a nutshell, Plaintiffs claim that defendants targeted minority homeowners, lured Plaintiffs (both African-American) to refinance their home without the aid of legal counsel and failed to provide the mandatory disclosures that would have informed them that the terms of the refinance were all but favorable to Plaintiffs, in that the low interest rate promised would soon be substituted with one way higher and financially unmanageable.

On February 21, 2013, Magistrate Judge Cheryl L. Pollak ordered Plaintiffs to file a status report. By this time, 120 days had elapsed since the filing of the complaint and, according to Federal Rule of Civil Procedure 4(m), the court “must” at that point dismiss the action unless “good cause for the failure” is shown. Fed. R. Civ. P. 4(m).

The status report indicated that defendants had yet to be served because plaintiff Weekes “tried to modify his mortgage but a modification agreement could not be reached.” (Dkt. No. 3.) Weeks requested an additional 40 days to serve defendants. Judge Pollak then issued a Report and Recommendation (“Report”) recommending that the action be dismissed. Objections to the Report were due on April 5, 2013. There were none.

SO ORDERED.

DATED: April 21, 2012
Brooklyn, New York

_____/s_____
Sterling Johnson, Jr, U.S.D.J.